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DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-205415

DATE: March 19, 1982

MATTER OF: Selective Service System - Yankelovich,
Skelly & White, Inc.

DIGEST:

1. A sole source contract may not properly be awarded by an authorized civilian contracting official of the Government without complying with the requirements of the Federal Procurement Regulations which permit negotiation of a sole source contract only in circumstances when the use of sole source contracting authority has been adequately justified by a written determination and finding.
2. Payment may be made on quantum meruit basis for services performed pursuant to the improper oral direction of an authorized contracting official on the theory that it would be unfair for the Government to retain the benefit of the services performed without payment for their reasonable value.
3. Payment for services performed and accepted by the Government during fiscal year 1981 can be properly charged to fiscal year 1981 appropriations to the extent the funds are available.

The Selective Service System (SSS) has requested a decision concerning the propriety of payment on an oral agreement entered into by the former director of SSS and the firm of Yankelovich, Skelly & White, Inc. (YSW). If payment is found to be proper, SSS has also asked for a determination of which fiscal year funds should be charged.

We have determined that payment may be made on a quantum meruit basis, and that the funds are properly chargeable to fiscal year 1981.

According to the record, the then SSS Director met with representatives of YSW on May 7, 1981, to discuss a proposal for a survey of SSS registrants to determine why a certain percentage of men are failing to register for the selective service system. Further meetings occurred between SSS personnel and YSW representatives on June 8 and June 12, 1981 to discuss how the survey should be conducted plus other details concerning the scope of work and cost. The SSS Director authorized the firm to commence work under the proposal.

In July, SSS gave printouts to YSW so that they could begin work on the survey. On August 18, SSS received and accepted survey questionnaires devised by YSW to be used in the study. SSS desires to pay the firm \$7,088.00 for this preliminary work.

SSS is an agency within the executive branch of the Government and the Director is the head of that agency. 50 U.S.C. App. § 460 (1976). As the agency head, the SSS Director has contracting authority. Nonetheless, no sole source contract properly could have been awarded here because the Director did not comply with the requirements of 41 U.S.C. § 253 (1976) and of the Federal Procurement Regulations (FPR) regarding the award of sole source contracts.

The touchstone of Federal procurement is that goods and services will be obtained in such a way as to promote full and free competition for the award of contracts consistent with the nature of the goods or services being acquired. Fiber Materials, Inc., 57 Comp. Gen. 527 (1978), 78-1 CPD 422. To that end, the statute requires purchases for property or services to be made by formal advertising except in certain limited circumstances, one of which is when the procurement is for services for which it is impracticable to obtain competition. 41 U.S.C. § 252(c)(10). The FPR permits the negotiation of sole source contracts within the ambit of this statutory provision, provided that the use of sole source contracting authority is adequately justified by a written determination and finding. FPR 1-3.210(b). There has been no sole source justification in this case.

It is, however, well recognized that in the absence of a valid contract a party is entitled to payment on a quantum meruit basis in these circumstances on the theory that it would be unfair for

the Government to retain the benefit of the services without payment for their reasonable value, 40 Comp. Gen. 447 (1961). Accordingly, payment of the \$7,088 may be made to Yankelovich, Skelly and White if the contracting officer determines that amount to be fair and reasonable for the services performed.

In addition, since the services were performed and accepted in fiscal year 1981, payment can be validly charged to fiscal year 1981 appropriations to the extent those funds are available.

for *Milton J. Dowd*
Comptroller General
of the United States